IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.23954 of 1997

DATED 23-2-2007

BETWEEN

M.Subramanyam.

.. Petitioner

And

A.P.State Handlooms Weavers Coop. Society Limited, represented by its Managing Director, Weavers Bhavan, Hyderabad and 3 others.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.23954 of 1997

ORDER:

Questioning the order dated 25.11.1996 whereby the petitioner was imposed the punishment of dismissal from service, the present writ petition is filed.

The grievance of the petitioner in this writ petition is that the punishment was imposed without giving him a reasonable opportunity of participating in the departmental enquiry and that he was not paid subsistence allowance during the said period.

Pursuant to an inspection held during the period 1.11.1989 to

14.11.1989, misappropriation of approximately Rs.3.5 lakhs was detected and the petitioner and another employee were held jointly responsible. A charge memo was issued on 30.11.1989 and the petitioner was placed under suspension on 11.12.1989. The petitioner submitted his explanation on 26.12.1989 denying the charges. An enquiry officer was appointed. The petitioner was paid subsistence allowance at 50% of last drawn wages in accordance with the bye laws of the respondent society regularly from the date of his suspension i.e. from 11.12.1989 to February 1994 and again in the months of October and November, 1994. He was, however, not paid subsistence allowance for the period from March 1994 till September 1994 and again from December, 1994 till the date of the order of punishment i.e. on 25.11.1996. In the meanwhile, pursuant to the Enquiry Officer having been appointed, an enquiry was held and the Enquiry Officer submitted his report on 10.6.1991. A copy of the report was furnished to the petitioner on 19.1.1995 and he was called upon to submit his objections, if any, thereto. While the petitioner, in the affidavit filed in support of the writ petition, would contend that he had submitted his explanation to the show cause notice issued enclosing a copy of the enquiry report, the respondents would deny receipt of any such explanation. After imposition of punishment on 25.11.1996, the subsistence allowance, which was hitherto not paid i.e. for the period from March, 1994 to September, 1994 and again from December 1994 to November, 1996 was, in fact, paid on 21.11.1997.

In the enquiry report, a reference was made to the fact that despite being called upon to do so, the petitioner did not record his

deposition at the first hearing i.e., on 6th and 7th of February, 1991 and that he had specifically failed to appear before the Enquiry Officer on 22.3.1991, 23.4.1991 and 14.5.1991. From the enquiry report, it is seen that the petitioner did attend the enquiry on 6th and 7th February, 1991. Except for a vague and bald averment in the affidavit filed in support of the writ petition that he was denied reasonable opportunity of participating in the departmental enquiry, nothing else is stated in support of the contention that he was denied reasonable opportunity of defending himself. Since the petitioner did not enclose a copy of the reply he is said to have filed along with the show cause notice, it is also not known as to whether the petitioner had raised any such plea with regard to the denial of reasonable opportunity at any time prior to the filing of the present writ petition.

Sri M.V.Raja Ram, learned counsel for the petitioner would pass on an undated representation submitted by the petitioner across the bar, which he would claim to be the reply submitted by the petitioner to the show cause notice. While no notice ought to be taken of such undated letters, in the absence of any proof of such a copy having been sent to the respondents, and of their having received the same, even if this undated letter is to be taken note of, nothing is stated therein as to whether the petitioner was unaware of the enquiry proceedings held on 22.3.1991, 23.4.1991 and 14.5.1991. All that is requested in the said undated letter is to furnish him a copy of the vigilance report and a copy of the inspection report. Even on a reading of this letter, it is clear that the petitioner was not unaware of the enquiry proceedings nor does he

dispute the fact that he appeared on the first hearing held on 6th and 7th of February, 1991. Petitioner's contention with regard to denial of reasonable opportunity of participating in the departmental enquiry must, therefore, fail.

It is also to be noticed that the petitioner was paid the subsistence allowance at 50% of his last drawn salary in accordance with the bye laws of the respondent society regularly till February 1994, much prior to which the enquiry proceedings had beeb completed in 1991 culminating in the enquiry officer submitting his report on 10.6.1991. During the period of the departmental enquiry being held in 1991, the petitioner was paid subsistence allowance regularly. It cannot, therefore, be said that he was denied a reasonable opportunity of defending himself on account of non-payment of subsistence allowance. There is nothing on record to indicate that on account of non- payment of subsistence allowance, the petitioner was not able to appear before the Enquiry Officer. Reliance placed by the petitioner on **Ghanshyamdas Srivastav v. State of Madhya Pradesh**[1] is, therefore, misplaced. The impugned order of punishment does not suffer from any illegality necessitating interference of this Court under Article 226 of the Constitution of India.

One contention which would however necessitate examination is the petitioner's plea of having not being paid his full wages last drawn in accordance with Section 47(6) of the A.P.Shops and Establishments Act, 1988 (for short 'the Act'), whereunder if the total period of suspension exceeds one year, the

employee shall be entitled to full wages during the period of suspension and the period of suspension shall be treated as on duty. Since the petitioner was paid only 50% of his salary as subsistence allowance as per the provision in the bye-laws, he would be entitled for the differential amount between the full wages and the 50% salary paid to him as subsistence allowance. While the bye-laws made by a cooperative society do not have the force of law, they cannot run contrary to the statutory provisions prescribed under the Act.

Sri N.Rajeswar Rao, learned standing counsel would, however, refer to Section 129 of the A.P. Cooperative Societies Act to contend that the provisions of the Act do not apply to the respondent society.

A perusal of Section 129 of the A.P. Cooperative Societies Act would establish that it is only the A.P.(Andhra Area) Shops and Establishments Act, 1948 and the A.P.(Telangana Area) Shops and Establishments Act, 1951 which do not apply to the respondent society. Section 77 of the A.P.Shops and Establishments Act,1988 clearly makes the provisions of the Act applicable even to Cooperative Societies. The contention of Sri N.Rajeshwar Rao that the provisions of the Act does not apply to the respondent society must, therefore, fail.

While upholding the order of punishment of dismissal of the petitioner from service, vide proceedings dated 25.11.1996, there shall be a direction to the respondents to pay subsistence allowance to the petitioner in accordance with Section 47(6) of the Act after

deducting the subsistence allowance already paid to him. Computation of the differential amount and payment thereof to the petitioner shall be made within a period of three months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

RAMESH RANGANATHAN,J

Dt: 23.2.2007
msv.

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[1] (1971) 3 SCC 802